

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6776**

**BILL NUMBER:** HB 1187

**NOTE PREPARED:** Jan 25, 2008

**BILL AMENDED:** Jan 24, 2008

**SUBJECT:** Nonprofit Corporations.

**FIRST AUTHOR:** Rep. Lawson L

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill provides that notice given by a nonprofit corporation (corporation) is fair and reasonable if the corporation provides notice by: (1) communicating in person; (2) mail or other method of delivery; or (3) telephone, voice mail, or other electronic means. The bill also provides that a corporation, other than a veteran's corporation, that has more than 1,000 members may give notice by radio, television, or other form of public broadcast communication. (Current law allows for notice by publication in a newspaper.)

The bill allows notice to be given to certain domestic or foreign corporations' registered agents at registered offices or to the domestic or foreign corporation or its secretary at its principal office. This bill requires a corporation to maintain a notice in a record unless oral notice is reasonable under the circumstances. The bill also establishes when notice is effective.

This bill requires a corporation to retain ballots for a certain period. The bill establishes circumstances under which contracts or transactions that involve conflicting interests of members, directors, members of a designated body, or officers are not void or voidable. (Current law establishes the circumstances under which contracts or transactions that involve conflicting interests of directors are not void or voidable.)

This bill also establishes immunity from liability for directors unless the party asserting liability meets certain requirements. The bill amends provisions that restrict certain actions by committees of directors. The bill also allows: (1) boards of directors; and (2) members present at a committee meeting; to appoint alternate members of a committee. This bill allows corporations to create or authorize the creation of advisory committees.

This bill repeals a provision that is replaced concerning conflicting interest contracts or transactions.

**Effective Date:** July 1, 2008.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** This bill amends several statutes governing the organization and operations of nonprofit corporations. Requiring several new and additional procedures to be followed by these corporations could increase the number of civil actions initiated. The bill also sets forth requirements for initiating a derivative proceeding versus a nonprofit corporation. The estimated number of civil actions that may be initiated due to the increase in statutory requirements for nonprofit corporations is indeterminable.

*Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

(Revised) *Background: Notice Requirements:* This bill amends the notice requirements for meetings of a nonprofit corporation. The bill requires a corporation to provide notice by communicating in person, by mail, or electronic means. The bill also allows notice by radio or television broadcast rather than only publishing notice in a newspaper. Notice records are also required to be kept under the bill, and a retention schedule is provided for these records.

*Related Party Transactions:* This bill sets forth how a corporation shall procedurally handle transactions between related parties. The bill expressly states that a transaction is not void solely because of the relationship or interest of the parties. These relationships include relations between corporations that share a director or member, or directors of one corporation that hold a similar position in another corporation or partnership, association, etc. These relationship interest requirements also extend to the corporations dealings with entities in which a director or member holds a financial interest. Although these transactions are not automatically voidable, the bill sets forth the notices and disclosures that must be made to keep the transaction from being voidable.

*Liability of Directors:* The bill also lists many requirements for establishing liability against a director of a nonprofit corporation. Some examples of conduct that may result in liability include: (1) an action not made in good faith; (2) a decision the director did not reasonably believe was in the best interest of the corporation; (3) lack of objectivity due to a familial or financial relationship; and (4) receipt of financial benefit that the director was not entitled to.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If

the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** Secretary of State.

**Local Agencies Affected:** Trial courts, city and town courts.

**Information Sources:**

**Fiscal Analyst:** Adam Brown, 317-232-9854.